STATE OF MICHIGAN

COURT OF APPEALS

THOMAS HANLON and KELLY HANLON,

Plaintiffs-Appellees,

v

STATE FARM FIRE AND CASUALTY COMPANY,

Defendant-Appellant.

UNPUBLISHED
May 14, 1999

No. 203812
Roscommon Circuit Court
LC No. 96-007605 CK

Before: White, P.J., and Markman, and Young, Jr., JJ.

PER CURIAM.

Defendant appeals as of right from the circuit court's denial of its motion for summary disposition and entry of judgment in favor of plaintiffs in this action seeking payments under a residential insurance policy. We reverse and remand for entry of summary disposition in defendant's favor.

I

In approximately October 1992, Kelly Hanlon moved into the residence of Thomas Hanlon, located in Redford, Michigan. Kelly brought several items of personal property with her, including furniture, toys, clothing for her children, a washing machine, a dryer, and a freezer. As a result of Kelly's move to the Redford home, Thomas had his State Farm homeowner's insurance policy limits increased.

In March of 1994, plaintiffs purchased a home in St. Helen, Michigan, intending to relocate there from Redford. Plaintiffs insured the St. Helen home with defendant at the time of closing. In June of 1994, plaintiffs began to move personal property from Kelly's grandmother's house in Union Lake to the St. Helen home. Plaintiffs were married in July 1995. In December 1995, they celebrated Christmas at the St. Helen home, but did not actually move there before January 1996. By January 8, 1996, Kelly considered the St. Helen home her principal residence, and by January 10, Kelly and her children were living there. Thomas only lived at the St. Helen home occasionally because he was commuting from Detroit. On or about January 21 or 28, 1996, Kelly moved some furniture from the

Redford home to the St. Helen home. On February 15, 1996, the St. Helen home and its contents were completely destroyed by fire.

Following the fire, plaintiffs filed a claim under their St. Helen policy. Aside from the dwelling, plaintiffs' personal property loss was determined by defendant to be $52,489.80. Because plaintiffs' personal property loss exceeded the St. Helen policy limits, defendant paid plaintiffs $29,962, defendant's maximum liability under the St. Helen policy. Defendant also paid plaintiffs an additional $8,079.10 under the Redford policy (ten percent of the Redford policy's personal contents limit). Plaintiffs subsequently filed this action claiming that a relocation clause in the Redford policy permitted recovery under that policy beyond the ten-percent limit.

II

The policy states, in pertinent part:

> COVERAGE B - PERSONAL PROPERTY
>
> 1. We cover personal property owned or used by an insured while it is anywhere in the world.
>
> * * *
>
> We cover personal property usually situated at an **insured's** residence, other than the **residence premises**, for up to $1000 or 10 % of the Coverage B limit, whichever is greater. This limitation does not apply to personal property in a newly acquired principal residence for the first 30 days after you start moving the property there. If the **residence premises** is a newly acquired principal residence, personal property in your immediate past principal residence is not subject to this limitation for the first 30 days after the inception of this policy.[1] [Emphasis in original.]

The policy defined "residence premises" to mean:

> a. The . . . family dwelling . . . where you reside and which is shown in the Declarations [the Redford property].

An insurance contract, like any other contract, should be read as a whole, and meaning given to all terms in order to effectuate the parties' intent. *Auto-Owners Ins Co v Churchman*, 440 Mich 560, 566; 489 NW2d 431 (1992). An insurance policy clause is valid if it is clear, unambiguous and not in contravention of public policy. *Id*. at 567. If a contract fairly admits of but one interpretation, it is not ambiguous. *Raska v Farm Bureau Ins Co*, 412 Mich 355, 362; 314 NW2d 440 (1982). Any ambiguity is construed against the insurer and in favor of the insured. *Bianchi v Automobile Club of Michigan*, 437 Mich 65, 70; 467 NW2d 17 (1991). "The terms of an insurance policy should be construed in the plain, ordinary and popular sense of the language used, as understood by an ordinary person." *Bianchi*, *supra* at 71 n 1, quoting 14 Callaghan, Michigan Civil Jurisprudence, Insurance, § 149, p 134. Standing alone, the fact that a particular term is not defined in a policy is not conclusive

evidence that ambiguity exists. *Michigan Millers Mutual Ins Co v Bronson Plating Co*, 445 Mich 558, 567; 519 NW2d 864 (1994). In determining what an ordinary person would understand a term to mean, it is customary to turn to dictionary definitions. *Id.* at 568-569.

Under the Redford policy, the Redford property is the "residence premises" and the St. Helen property is the "insured's residence." See *Nelson v Cambridge Mut Fire Ins Co*, 30 Mass App Ct 671, 674; 572 NE2d 594 (1991), in which the court interpreted a similar clause. However, the remaining portion of the clause, often referred to as a relocation clause or provision, remains in dispute. If the relocation provision applies, plaintiffs may recover in excess of the ten-percent limit.

Defendant argues that although the parties agree that the St. Helen property was plaintiffs' principal residence at the time of the fire, it was not "newly acquired." Plaintiffs argue that the term "newly acquired" is ambiguous and should be construed in their favor; alternatively, they argue that the St. Helen property was "newly acquired" because it was purchased after the original issuance of the Redford policy. Although the policy does not define the term "newly acquired," nor have any Michigan cases, case law from other jurisdictions and common usage of the term lead us to conclude that the term is not ambiguous and the St. Helen home was not a "newly acquired principal residence" at the time of the fire.

In *Bell v West American Ins Co*, 89 NC App 280, 281; 365 SE2d 669 (1988), the plaintiffs moved to a home in Advance, North Carolina in 1984, having purchased an insurance policy on that residence immediately before. About nine months later, the plaintiffs decided to move back to a former residence they still owned in Winston-Salem, North Carolina. Over the course of a month, the plaintiffs continued to live in the Advance home while moving personal property back to Winston-Salem. During this transition, a theft occurred at the Winston-Salem residence and the plaintiffs filed a claim under the Advance policy. *Id*. at 281-283. The policy at issue was virtually identical to the one in the instant case, and the defendant insurance company appealed the trial court's award of summary disposition to the plaintiff. *Id*. In reversing the trial court, the North Carolina Court of Appeals held that the "residence premises" referred to in the policy was the Advance location, not the Winston-Salem residence. *Id*. at 283. The court further held that a residence is "newly acquired" if it was acquired after the insurance policy was issued:

> . . . . Personal property is insured against theft under this provision if it is located in a "newly acquired principal residence." The pertinent term in the relocation clause is "newly acquired." Though our courts have not interpreted the phrase "newly acquired" in the context of a residence, it has been defined with reference to automobile insurance. In *Insurance Co v Shaffer*, 250 NC 45, 108 SE2d 49 (1959S), our court discussed with approval cases from other jurisdictions that defined "newly acquired" as meaning acquired after the issuance of the policy [citations omitted]. Thus, giving effect to the words "newly acquired," it is apparent that the property in question would not be covered under the relocation clause of the policy because the Winston-Salem house was acquired before the issuance of the [Advance] insurance policy. [*Id*.]

In the instant case, plaintiffs had an insurance policy on the Redford home. Plaintiffs later purchased the St. Helen home and obtained an insurance policy at the time of closing in March 1994. Plaintiffs renewed their insurance policy on the Redford home in October 1995, over 1 ½years after acquiring the St. Helen home. The St. Helen house was destroyed by fire in February 1996. The question then becomes whether the operative date of issuance is the renewal date of the Redford policy in 1995, or the issuance date of the original policy. If the renewal date, the St. Helen home was acquired before that date and would therefore not be "newly acquired;" if the original issuance date, the St. Helen home was acquired after that date and would be "newly acquired." Plaintiffs essentially argue that each renewal is not a new policy and that because the Redford policy was issued originally in 1992, any property acquired thereafter is "newly acquired." Defendant argues that the court in *Bell*, *supra*, relied on *Shaffer*, *supra*, which held that an automobile was "newly acquired" if it was obtained "after the issuance of the policy and during the policy term," and that under Michigan case law, a renewal is a new contract.

A "[r]enewal implies a fixed contract and the expiration of the original coverage." *Attorney General, ex rel Comm of Ins v Lapeer Farmers Mut Fire Ins Ass'n*, 297 Mich 174, 183; 297 NW2d 232 (1941); see also *Walden v Consolidated Underwriters*, 316 Mich 341, 349; 25 NW2d 248 (1946), and *Perkins v Century Ins Co*, 303 Mich 679, 683; 7 NW2d 106 (1942). We reject plaintiffs' argument that *Russell v State Farm Mutual Ins*, 47 Mich App 677; 209 NW2d 815 (1973), indicates that *Burch v Wargo*, 378 Mich 200; 144 NW2d 342 (1966), altered this proposition. This Court in *Russell, supra* at 680, noted that Michigan has accepted the following approach:

> A renewal contract has been stated by many jurisdictions to be a new, and a separate and distinct contract, unless the intention of the parties is shown clearly that the original and renewal agreements shall constitute one continuous contract. It has thus been stated to be a new or separate contract which is based upon and subject to the same terms and conditions as were contained in the original policy. Unless otherwise provided, the rights of the parties are controlled by the terms of the original contract, and the insured is entitled to assume, unless he has notice to the contrary, that the terms of the renewal policy are the same as those of the original contract. [*Id.*, quoting 13 Appleman, Insurance Law & Practice, § 7648, pp 419-420.][2]

We conclude that the St. Helen home, purchased almost two years before the fire, and over 1 ½ years after renewal of the Redford policy at issue here, was not "newly acquired" under the Redford policy.[3] The circuit court erred in denying defendant's motion for summary disposition.

Reversed and remanded for entry of judgment in favor of defendant. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Stephen J. Markman

Judge Robert P. Young, Jr. not participating.

[1] The last sentence of this clause, referring to property still in an old residence where the insured property is the new residence, is not in issue here.

[2] In *Russell*, the Court addressed the question whether the policy was a renewal policy or a completely new policy, the answer to which determined whether the insured was entitled to assume that, absent notice to the contrary, the terms of the renewal policy are the same as those of the original contract, an issue not present here. The Court did not question the premise that a renewal policy is a separate and new contract subject to the same terms as the original contract.

[3] In light of our disposition, we need not address defendant's additional argument that the thirty-day time period of the relocation clause began to run before January 1996 because plaintiffs moved personal property to the St. Helen home long before that time.